

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RANDALL MESCALL,
 #1055284

Plaintiff,

vs.

UNIVERSITY MEDICAL CENTER, *et al.*,

Defendants.

2:12-cv-00927-KJD-VCF

ORDER

While plaintiff has now submitted a completed application to proceed *in forma pauperis*, he also submitted a handwritten document that he styled a civil rights complaint (ECF #1-1). Such document is insufficient to initiate a civil rights action in this court. The Local Rules require plaintiffs appearing in *pro se*, such as this plaintiff, to file all of their complaints and petitions on the court's approved forms. LSR 2-1("[a] civil rights complaint filed by a person who is not represented by counsel shall be on the form provided by this court."). Accordingly, this action is dismissed without prejudice to plaintiff filing a new action, with a new case number and either the full filing fee or a completed application to proceed *in forma pauperis*, with all required financial information.

The court also observes that this handwritten document is thirty-seven pages long, names sixty-four defendants and does not appear to set forth claims in a clear, readily discernible manner (*see*

1 ECF #1-1). Rule 8 of the Federal Rules of Civil Procedure provides that a complaint should be a “short
2 and plain statement” of the claims showing that plaintiff is entitled to relief.

3 Finally, the court also notes that, in its preliminary review, plaintiff appears—among other
4 claims—to challenge his underlying conviction. However, when a prisoner challenges the legality or
5 duration of his custody, or raises a constitutional challenge which could entitle him to an earlier release,
6 his sole federal remedy is a writ of *habeas corpus*. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young*
7 *v. Kenny*, 907 F.2d 874 (9th Cir. 1990), *cert. denied* 11 S.Ct. 1090 (1991). Moreover, when seeking
8 damages for an allegedly unconstitutional conviction or imprisonment, “a § 1983 plaintiff must prove
9 that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
10 invalid by a state tribunal authorized to make such determination, or called into question by a federal
11 court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477, 487-
12 88 (1994). “A claim for damages bearing that relationship to a conviction or sentence that has not been
13 so invalidated is not cognizable under § 1983.” *Id.* at 488.

14 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the
15 complaint (ECF #1-1).

16 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice.

17 **IT IS FURTHER ORDERED** that the following motions filed by plaintiff: application
18 to proceed *in forma pauperis* (ECF #3); two motions for appointment of counsel (ECF #s4 and 6); and
19 motion for continuance (ECF #5) are all **DENIED** as moot.

20 **IT IS FURTHER ORDERED** that the Clerk **SHALL SEND** to plaintiff the approved
21 forms for filing a civil rights lawsuits under 42 U.S.C. §1983 and an Application to Proceed *In Forma*
22 *Pauperis* by a prisoner, as well as the document “Information and Instructions for Filing a Motion to
23 Proceed *In Forma Pauperis*.”

1 **IT IS FURTHER ORDERED** that the Clerk shall send to plaintiff a blank petition for
2 writ of *habeas corpus* form with instructions.

3 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
4 and close this case.

5 DATED: January 7, 2013

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7 UNITED STATES DISTRICT JUDGE
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